



Exploitation in Clinical Research

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Disclaimer

- ❑ The views expressed do not represent any position or policy of the National Institutes of Health or the Department of Health and Human Services.
- ❑ Some of these views may be rejected by my colleagues in the Department of Clinical Bioethics.
- ❑ Indeed, some of the views do not represent the settled position of the speaker. I'm still thinking.



My approach

- ❑ More Philosophical
- ❑ Anti-Indoctrination
- ❑ Complying v. questioning
- ❑ Standing Back
- ❑ Try to think rigorously
- ❑ Eschew labels and rhetoric
- ❑ Facts matter: ethics doesn't stand alone



Words of Wisdom

- Because it isn't a question of whether it was legal or illegal. That isn't enough. The question is, was it morally wrong? (Richard Nixon, Checkers Speech, September 23, 1952.)



Laws, Regulations, and Ethics

- ❑ A law or regulation may allow for research that is unethical. Just because it's "legal" doesn't mean it's o.k. (cell phones)
- ❑ A law or regulation may disallow research that is ethical. Just because it's illegal doesn't mean that it's wrong (you provide examples)
- ❑ You probably should comply with such laws anyway, but we should think about them.



Maternal-Fetal Transmission of HIV

- ❑ Long Course Treatment Efficacy had been established
- ❑ Researchers wanted to investigate efficacy of short course treatment
- ❑ Compared efficacy of short course treatment with no treatment or placebo



A Case Study

The Surfaxin Trial

- ❑ Respiratory Distress Syndrome
- ❑ Surfactant Therapy
- ❑ Cost is \$1,000 -- \$2,400
- ❑ Discover Pharmaceuticals and Surfaxin
- ❑ Target Market: USA
- ❑ Research: South American nation
- ❑ Annual per capita health care expenditures from \$60 to \$140.



Exploitation Claims

"Unless the interventions being tested will actually be made available to the impoverished populations that are being used as research subjects, developed countries are simply exploiting them in order to quickly use the knowledge gained from the clinical trials for the developed countries' own benefit." (George Annas and Michael Grodin, "Human Rights and Maternal-Fetal HIV Transmission Prevention Trials in Africa," 88 American Journal of Public Health 560 (1998) at 561.)



Exploitation Claims

"... the placebo-controlled trials are exploitative of poor people, who are being manipulated into serving the interests of those who live in wealthy nations. . ."

(Ronald Bayer, "The Debate Over Maternal-Fetal HIV Transmission Prevention Trials in Africa, Asia, and the Caribbean: Racist Exploitation or Exploitation of Racism," 88 American Journal of Public Health 567 (1998), at 569)



Exploitation Claims

"If the knowledge gained from the research in such a country is used primarily for the benefit of populations that can afford the tested product, the research may rightly be characterized as exploitative and therefore, unethical." (Council for International Organizations of Medical Sciences International Ethical Guidelines for Biomedical Research Involving Human Subjects, Revised draft, January 2002.)



Exploitation Claims

"If the results of a clinical trial are not made reasonably available in a timely manner to study participants and other inhabitants of a host country, the researchers might be justly accused of exploiting poor, undereducated subjects for the benefit of more affluent populations of the sponsoring countries."
(Robert Crouch and John Arras, "AZT Trials and Tribulations" 28 Hastings Center Report 26 (1998), at 29.)



The Exploitation Argument

- (1) If a practice is exploitative, it should not be permitted.
- (2) Placebo controlled trials (PCTs) such as **The Surfaxin Trial** are exploitative.
- (3) Therefore, PCTs should not be permitted.



Concept of Exploitation

- A exploits B when A takes unfair advantage of B. (True, but vacuous)



Forms of Wrongdoing

- ❑ Exploitation
- ❑ Discrimination
- ❑ Abuse
- ❑ Paternalism
- ❑ Neglect
- ❑ Etc.



Exploitation Examples

Nazis. A, a Nazi medical scientist, wishes to discover how long a person can live in freezing water. He places B, who has been placed in a death camp, in freezing water. B dies within an hour.

Kidneys. A, who is affluent, offers to pay B \$25,000 for one of his kidneys for purposes of transplantation. B, who is poor, agrees in order to better provide for his family.

Rescue. B's car is in a snow bank on a rural road late at night. A stops and ascertains that it will take him 2 minutes to pull it out. A offers to fix B's car for \$100.



Exploitation Examples (cont.)

Psychotherapy. A, a psychotherapist, proposes to B, his patient, that they have sexual relations. B, who is infatuated with her therapist, agrees.

Slavery. C sells B to A as a slave. A forces B to work in the fields for bare subsistence.

- **Domestic.** A, a lawyer, hires B, a recent immigrant, to take clean her home (washing floors, toilets, etc.) for minimum wage. B would otherwise be unemployed.
- **Sweatshops.** Nike hires unemployed people in Thailand. The employees work long hours for \$1 per hour, which is considerably above the average wage in Thailand.



Types of Exploitation

- ❑ Harmful and Nonconsensual Exploitation (Nazis, Slavery, Psychotherapy,)
- ❑ Mutually Advantageous and Consensual Exploitation [MACE] (Kidneys, Rescue, Domestic, Sweatshops)



When are transactions unfair?

- A takes advantage of B's vulnerability?
- Surgery. A proposes to amputate B's leg for a fair fee. Because B will die unless she agrees to the amputation, B authorizes A to perform the surgery.



When are transactions unfair?

- When A gains much more than B?
- Unfair Surgery. A proposes to amputate B's leg for three times his normal fee. Because B will die unless she agrees to the amputation and can't find another surgeon, B authorizes A to perform the surgery.



When are transactions unfair?

□ A counter-intuitive proposition:

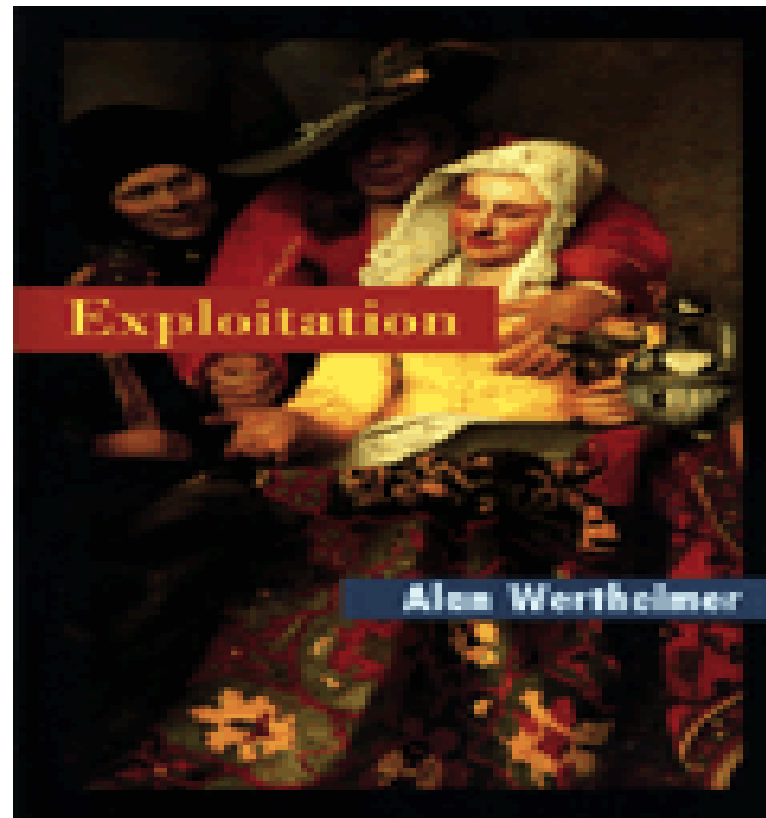
In exploitative transactions, the weaker party typically gains MORE than the stronger party. It is precisely because the stronger party does not gain all that much that she can threaten to walk away; it is precisely because the weaker party stands to gain a lot that he cannot walk away.



When are transactions unfair

- When A gains more than A should gain or when B gains less than B should gain.
(We need a theory of fair transactions)
- My hypothetical market price theory
(Wertheimer, Exploitation, Chapter 7).

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An Important Distinction

- A is taking unfair advantage of B
- A is taking (fair) advantage of an unfairness to B or, perhaps, B's unfortunate or unjust situation.
- Unemployed Lawyer: B has been unjustly fired. He was making \$150,000. A offers B a job teaching at a community college for \$30,000.



Another Important Distinction

- Transactional injustice v. background injustice
- It is a mistake to transfer our justifiable moral objections to someone's background conditions to the transactions which result from those background conditions



When is a Transaction Consensual?

- ❑ Token of Consent
- ❑ Voluntary (coercion)
- ❑ Informed
- ❑ Competent



Coercion

- A coerces B to do X only if A proposes (threatens) to violate B's rights unless B does X.
- A coerces B (or B acts involuntarily) to do X when B has no reasonable alternative but to do X.

(Alan Wertheimer, Coercion, 1987)



The Godfather's Offer

Michael: Well, when Johnny (Fontane) was first starting out, he was signed to this personal service contract with a big band leader. And as his career got better and better, he wanted to get out of it. Now Johnny is my father's godson. And my father went to see this band leader, and he offered him \$10,000 to let Johnny go. But the band leader said no. So the next day, my father went to see him; only this time with Luca Brasi. And within an hour, he signed a release, for a certified check for \$1,000.

Kay: How'd he do that?

Michael: My father made him an offer he couldn't refuse.



The Godfather's Offer (cont)

Kay: What was that?

Michael: Luca Brasi held a gun to his head, and my father assured him that either his brains - or his signature -- would be on the contract.



Godfather's Offer (Revised)

After original offer of \$10,000 is rejected,
Don Corleone raises the offer to
\$100,000.

The bandleader accepts the proposal.



MACE

There are cases of alleged exploitation where B would not have agreed under better or more just background conditions, but where B is making a voluntary, informed, and competent choice under the circumstances in which she finds herself.



A Challenge

- If a transaction is beneficial to both parties and is consensual, then it cannot be exploitative.



Response

- ❑ I disagree. I believe that if it is feasible for the stronger party to offer a fairer deal, then it acts wrongly in not doing so.
- ❑ But, even if I'm right that it is wrong to engage in mutually beneficial and consensual exploitation, it does not follow that we should seek to prevent such exploitation.
- ❑ That is a different question.



Unethical Action and Interference

- The wrongness of A's action does not entail that we should interfere with A's action.
 - The Holocaust Denier
 - The bigoted parent's will
 - The sex-preference abortion



Should we prohibit MACE?

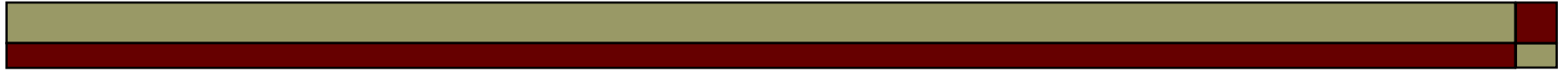
□ Assumptions

- A is under no obligation to transact with B
- B gains from the transaction with A
- B consents to transact with A
- A's benefit from the transaction is unfair (by some criterion)



The Permissible Exploitation Principle

Given the non-ideal conditions in which people find themselves, it is wrong to interfere with or seek to prevent transactions that are beneficial to the parties involved, that are worse for no one else, and to which the parties give appropriately robust consent even if the transaction would not have occurred under more just conditions and even if the transaction itself is unfair, unjust, or exploitative – if intervention results in no transaction rather than a more fair transaction.



Exploitation in Clinical Research



The Exploitation Argument

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Two Questions

- Is the Surfaxin Trial exploitative?
- Should we prevent it? Should we insist that it not go forward in its proposed form?



Best Proven Care Principle

- "in any medical study, every patient -- including those of a control group, if any -- should be assured of the best proven diagnostic and therapeutic method. (The Declaration of Helsinki)



Best Proven Care as Strategic

In the developed world, if we insist that ACTs be used whenever a standard therapy exists, there is little risk that the research will go away. The Standard Care principle forces researchers to treat subjects better than they otherwise might treat them.



Does the BPC principle help?

- ❑ Maybe. Such regulations may prevent a “race to the bottom.”
- ❑ No. In the developing world, researchers may go elsewhere if PCTs such as Surfaxin Trial are disallowed.
- ❑ It is an empirical question as to whether disallowing PCTs helps potential subjects or increases welfare of persons in developing nations. (Facts matter!)



Fair Benefits

"Unless the interventions being tested will actually be made available to the impoverished populations that are being used as research subjects, developed countries are simply exploiting them in order to quickly use the knowledge gained from the clinical trials for the developed countries' own benefit." (Annas and Grodin)

"If the results of a clinical trial are not made reasonably available in a timely manner to study participants and other inhabitants of a host country, the researchers might be justly accused of exploiting poor, undereducated subjects for the benefit of more affluent populations of the sponsoring countries." (Crouch and Arras)



Fair Benefits

- “An important additional safeguard is needed to avoid the exploitation of potentially vulnerable populations in developing countries — namely, clinical trials sponsored or regulated by U.S. groups should be limited to those that are responsive to the host country's health needs. If the intervention being tested is not likely to be affordable in the host country or if the health care infrastructure cannot support its proper distribution and use, it is unethical to ask persons in that country to participate in the research, since **they** will not enjoy any of its potential benefits.” (Harold Shapiro and Eric Meslin, “Ethical Issues in the Design and Conduct of Clinical Trials in Developing Countries, New England Journal of Medicine, Vol 345, July 12, 2001, p. 139), emphasis added



An Analogy

- If the running shoes produced in Thailand are used primarily for the benefit of populations that can afford the running shoes, the production of such running shoes may rightly be characterized as exploitative and therefore, unethical.
- Does the analogy work?



Fair Benefits: Some Questions

- If it is wrong to ask subjects to participate if they may never benefit, why does it become permissible because their fellow citizens may benefit?
- If it is not wrong to ask these subjects to participate, why is it necessary that their fellow citizens benefit?



Three questions about consent

- ❑ Do the research subjects give valid consent?
- ❑ If not, is it possible that they could give valid consent?
- ❑ If not, is it possible that assent + proxy consent will be ethically sufficient?
 - Subject Assent
 - Proxy Consent



Inducements and Consent

- (1) The inducements constitute a seductive offer that motivates subjects to consent to participate when doing so does not advance their interests (Kidneys?)
- (2) Given the subject's objective circumstances, the inducements make it rational for the subjects to participate.



How bad is exploitation?

- “Abject poverty is harsh enough without people having to bear the additional burdens of serving as research subjects.” (David Rothman)
- “As we see nowadays in South-East Asia or the Caribbean, the misery of being exploited by capitalists is nothing compared to the misery of not being exploited at all.” (Joan Robinson, Economic Philosophy)



Exploitation v. Neglect

- ❑ Nike employs workers for a wage that is very low by American standards, but above average in country X. Some claim that Nike is exploiting workers in X.
- ❑ Hikey (another manufacturer of athletic shoes) wishes to avoid the criticism that it is exploiting workers and builds a highly automated plant in the U.S.



An Ethical Double Standard?

"Residents of impoverished, postcolonial countries, the majority of whom are people of color, must be protected from potential exploitation in research. Otherwise, the abominable state of health care in these countries can be used to justify studies that could never pass ethical muster in the sponsoring country."
(Lurie and Wolfe)



A double standard?

- “Acceptance of this ethical relativism could result in widespread exploitation of vulnerable Third World populations for research programs that could not be carried out in the sponsoring countries.” (Marcia Angell, “The Ethics of Clinical Research in the Third World,” New England Journal of Medicine, Volume 847, September 18, 1997)



An important distinction

- Different principles are applied in different contexts
- The same or a universal principle has different consequences when it is applied in different contexts



Ethics as Regulation

- ❑ If ethical principles work, they affect behavior.
- ❑ We need to know *how* they affect behavior.
- ❑ We can't assume that good intentions and high-minded principles achieve their goals.



Self-Defeating Regulations

- ❑ The FAA once proposed requiring that infants be placed in a child restraint. They argued that this would save lives. The evidence suggests that it would have saved some lives of infants on airplanes, but it would actually lead to more deaths in cars. “Effects and Costs of Requiring Child-Restraint Systems for Young Children Traveling on Commercial Airplanes” (Archives Pediatric and Adolescent Medicine, 2003)



Conclusion

- We will not resolve questions as to the justifiability of studies such as ***The Surfaxin Trial*** by appeal to the derisive language of exploitation.
- We will resolve them by the rigorous examination of ethical arguments and by the painstaking study of the relevant data as to the effects of various policies on people's lives.